IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.
CRIMINAL REVISION APPLICATION No.186 of 2007

Pratap Kesharchand Doshi ..Applicant.

Vs.

Ashok Motilal Katariya & Anr. ..Respondents.

Mr S. V. Marwadi with Sunita Sharma,
Advocate for the Applicant.

Mr J. P. Barmeda i/b A. A. Garge, Advocate
for the Respondent No.1.

Mr U. V.Nikam, APP for the Respondent No.2.

CORAM: V.C. DAGA,J.
DATED: 6. 7. 2007.

P.C.:-

1. Heard learned counsel appearing for the applicant,learned Advocate for the Respondent No.1-complainant and learned APP for the Respondent No.2-State.

2. Perused revision petition with documents annexed thereto.

3. The petitioner has invoked revisional jurisdiction of this Court to challenge the order dated 1.2.2007 passed in Criminal Revision Application No. 23 of 2006 by the Ad-hoc Additional Sessions Judge-1, Baramati; whereby, the order issuing process against the

original accused no.4 Ashok Motilal Katariya in Criminal Case No. 3184 of 2004 is quashed and set aside holding that the accused no.4 (the respondent no.1 herein) was not a drawer or signatory to the cheque in question.

4. The categorical role played by the respondent no.1 (i.e. the accused No.4) in the affairs of the "Ashoka Builders" has not been pleaded in the complaint. There is no material on record, prima facie, to establish that the accused no.4-respondent no.1 was concerned with day to day affairs of the accused's firm "M/s. Ashoka Builders". In the above view of the matter, no interference with the impugned order is necessary.

5. Although the revision petition is being dismissed and order of the Court below is being confirmed, I would like to state that there are ample provisions in the Criminal Procedure Code, 1973 in which the Court can take cognizance against the person who has not been made accused and try him in the same manner alongwith other accused. Section 319 of the Cr.P.C. can always be resorted to. It is, thus, clarified that it will be open for

the trial court, at any subsequent appropriate stage to join the respondent no.1 (original accused no.4) as accused in the same trial, if the complainant is able to satisfy the Court by leading evidence about involvement of the respondent no.1 (the original accused no.4) in the offence referred to in the complaint. In the event, such joinder shall not be viewed as fresh or second prosecution.

6. With the aforesaid clarification, the present revision application is dismissed in limini with no order as to costs.

(V.C. DAGA,J.)